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INSIDE ALEC

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SOUTH DAKOTA

Constitutional Amendment to Protect Secret Ballot Elections

with SEN. DAVID KNUDSON

Senator David Knudson was elected to the South Dakota Senate in November of 2002, 2004, 2006, and 2008 and currently serves as the Senate Majority Leader. He also served as the Governor's Chief of Staff during the 1995 and 1999 legislative sessions.

The right to a private, secret ballot vote in union and political elections is a cornerstone of American democracy. Thankfully American Legislative Exchange Council (ALEC) member Sen. David Knudson in South Dakota shares this belief and works to protect secret ballot elections in South Dakota. Sen. Knudson sponsored a state constitutional amendment guaranteeing a right to vote by secret ballot in federal, state, and union representation elections.

The proposed amendment is needed to counter a union-organizing measure being considered by Congress called "card check." The official title of the legislation in Congress is the *Employee Free Choice Act*, which if enacted would change how unions are allowed to organize in the United States by eliminating secret ballot elections for workers voting on whether to unionize or not.

Sen. Knudson remarked, "There is a serious potential threat that federal legislation may restrict the right of voters across America from having a secret ballot in union elections. This would be a serious erosion of one of our fundamental tenants of democracy."

To circumvent these dangerous effects, Sen. Knudson and other South Dakota legislators have worked to craft an amendment to safeguard some of the basic rights of their citizens. The amendment would add a new section to Article VI of the state constitution stating: "The right of individuals to vote by secret ballot is fundamental. If any state or federal law requires or permits an election for public office, for any initiative or referendum, or for any designation or authorization of employee representation, the right of any individual to vote by secret ballot shall be guaranteed." The amendment has been passed by the South Dakota House and Senate and will be on the ballot before South Dakota voters in November of 2010. "I believe the amendment has a strong chance of passing," Sen. Knudson said. "Any measure that protects the secret ballot will find wide support among our citizens." Similar legislative campaigns are taking place in Arizona, Arkansas, Georgia, Missouri, Nevada, North Dakota, Oklahoma, South Carolina, and Utah.

ALEC supports secret ballot elections for government and in the workplace. ALEC applauds Sen. Knudson for leading his state in protecting the rights of its citizens. "The importance of the secret ballot is fundamental to American democracy whether it is a labor election or political election," Sen. Knudson stated. "It is essential that we ensure the people the protection of a secret ballot." ■

Labeling is Just More Government Control

BY REP. SUSAN LYNN

| *This article was reprinted from* The Tennessean |

Last year, I passed an anti-menu-labeling bill that was subsequently vetoed by the governor. We overrode the veto in the House and Senate after reconvening in January, which put the law into effect in Tennessee.

As chairwoman of the American Legislative Exchange Council's Commerce Task Force, I proposed and passed anti-menu-labeling model legislation for the states.

Now we learn that the federal healthcare bill contains menu-labeling dictates for restaurant menus, menu boards, drive-through displays, and vending machines. A few local and state governments have similar regulations. The evidence varies about whether menu labeling is effective.

Regulation will cost consumers

Some studies show that as few as one in six consumers actually use the information to make purchasing decisions. Harvard University removed menu-labeling information in its dining halls in the fall of 2008 due to concerns from parents and friends over students who developed eating disorders. As a result, other schools have avoided the idea altogether.

What can't be legislated are the motivations of consumers; for instance, another study showed that consumers significantly increased total energy, fat grams, and carbohydrate grams and decreased protein and energy from protein when exposed to menu labeling information. It seems that people become overly concerned with calorie information rather than the more important matters of nutrition and variety.

Just as concerning as the misuse of information is the great monetary cost that consumers must suffer. Replacing menus, menu boards, and handouts and testing food is expensive. Determining the number of calories in a food item is a matter of science—the food must be burned and the amount of heat it emits determines its calories. In several states the requirement has opened restaurants up to class-action lawsuits due to claims of inaccurate calorie and nutrition counts.

There are loopholes; menu specials, custom orders, and ingredient substitutions are exempted—for now.

But where is the principle that allows the federal government to impose such a mandate on restaurants?

The fault is mainly due to a modern misinterpretation of the Commerce clause of the Constitution. Until roughly 1942, the Commerce clause was well understood to be a power of the federal government used only to remove impediments to trade between the states—such as tariffs charged by one state on goods moving through to another state. The idea was to limit state legislatures from restricting trade between each other, thus allowing consumers and merchants freedom to trade. It was never to allow the federal government to decide what commerce will be legal or illegal, or what regulations will apply to trades and services. Such regulations are simply not part of the federal government's 30 enumerated powers.

Further, there must be a constitutional violation of rights in order for government to force us all to incur such expense. What right is being secured by the imposition of menu labeling?

Is it likely that anyone unschooled on proper diet will appreciate the information on a menu board? Would not those that already understand know proper choices? Certainly people of good conscience are not fooled by their own purchasing decisions. Federal menu labeling is more big government control. ■

Rep. Susan Lynn is a Tennessee State Representative and chairwoman of ALEC's Commerce, Insurance, and Economic Development Task Force.

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| by **COURTNEY O'BRIEN** |

Three Little Words, One Giant Problem

How Congressional Action Threatens the Financial Markets

Three words can change a relationship forever. In the relationship between the free-market system and thriving business, those words are: **massive government agency**.

This past March, Senator Chris Dodd unveiled a sweeping financial reform proposal: *The Restoring American Financial Stability Act of 2010*, a hybrid of *The Wall Street Reform and Consumer Protection Act* plan passed by the U.S. House in December 2009. Both bills include provisions for a new Consumer Financial Protection Agency or Bureau (CFPA), a massive government program which will preempt state regulation and increase taxes and spending.

This new proposed federal agency will use its broad powers to supervise and enforce consumer protection laws. Consumer protection laws are a form of government regulation that are intended to help ensure fair competition and prevent businesses from engaging in unfair practices to gain an advantage over competitors. Some examples at the federal level are the *Fair Debt Collection Practices Act*, the *Fair Credit Reporting Act*, and the *Truth in Lending Act*. The major difference between those acts and this one is that the CFPA will have broad rule-writing authority on a wide range of consumer laws. For example,

this new agency will regulate everything from store gift cards to Western Union money transfers.

Although the agency would be located within the Federal Reserve, it would be autonomous, with its own director appointed by the President, a separate source of funding, and the authority to go to court on its own behalf. The agency will also be able to write new regulations without congressional approval.

The jurisdiction of the agency is vast. Its expansive powers will dictate the way products and services can be offered in the financial services market. The agency will have almost unlimited power when it comes to regulating mortgage, credit card, student, auto, and payday loan terms. This power will also sweep over a vast segment of the business community including but not limited to, any entity that provides educational courses or instructional materials to consumers on financial matters, and businesses that are "service providers" to institutions that offer consumer financial products. Examples would include software companies helping consumers manage their money, lawyers, print and electronic media businesses, utility companies, advertising and marketing companies, any school or nonprofit organization that provides financial literacy education, and any other business that extends credit as described above.

The effect on an already gasping-for-air economy will be less than ideal. The government will raise taxes and fees on consumers to fund the new agency. Another problem will be reduced lending to consumers and small business owners as lenders pull back. The agency will make it more difficult to lend money, increase the number of lawsuits against lenders, and make it harder for borrowers with subprime credit scores to get loans.

David Hirschmann, president and CEO of the U.S. Chamber of Commerce Center for Capital Markets Competitiveness argues that: "The CFPA as presented in the Dodd bill would make it harder for small businesses to obtain credit and is the wrong approach to consumer protection. Rather than directly addressing the failures in regulation that contributed to the current economic crisis, the CFPA would simply add a new agency with unprecedented power on top of a broken regulatory system." That's right, the 1,336-page bill does nothing to address or restrict the two entities that helped cause the housing bubble, the government-sponsored Fannie Mae and Freddie Mac. The CFPA will instead focus its efforts on making it difficult to start a business and receiving affordable home and auto loans. The CFPA will restrict access to credit and limit consumer choice when both are essential to revitalizing our economy and creating jobs. Combining this with vague regulatory standards for businesses will make it difficult to comply with new regulations.

Not only will its regulations prove to make a firm's life more difficult, so too will it complicate state regulations. The legislation establishes a new set of minimum financial standards that states will have to enact. The CFPA would set a floor, not a ceiling, for state consumer protection laws. Rather than a uniform national standard, there will be the CFPA and 50 state regulators, each with their own set of rules and interpretations of the CFPA. State Attorneys General will be interpreting and enforcing federal law at the state level. Companies and their customers will be lost in a maze of confusing and overlapping rules, increasing bureaucracy and confusion.

The 1,336-page CFPA bill does nothing to address or restrict the two entities that helped cause the housing bubble, the government-sponsored Fannie Mae and Freddie Mac.

This maze will corner and trap businesses trying to survive in your state. Consumers will suffer as their choices dwindle and lenders recoil. The CFPA will place federal mandates on the states, depriving states the right to continue to regulate industries within their own borders. Policy should be focused on creating more choice and opportunity in the market, and encouraging job growth—not threatening it. A relationship built on coercion and repression should not last, but three little words can ensure it does. ■

Courtney O'Brien is the legislative assistant for ALEC's Commerce, Insurance, and Economic Development Task Force and for ALEC's Public Safety and Elections Task Force.

When the Government Attacks

How Stimulus Funds are Attacking Businesses and Destroying Jobs

BY MICHAEL HOUGH & COURTNEY O'BRIEN

Look for a State Factor policy brief on this issue coming soon, with information on specific grants in the states and important information for policymakers.

Less than one month after his inauguration, President Barack Obama signed into law the *American Recovery and Reinvestment Act*, commonly referred to as the stimulus bill. The 1,072-page bill, which cost $787 billion, was supposed to serve as an economic stimulus and create jobs in the wake of a severe financial downturn. Unfortunately, parts of the stimulus bill are being used to attack private companies, discourage consumers from buying "unhealthy" products, and lobbying state and local legislators to increase taxes on these products. At the same time the government is subsidizing the purchase of products it deems to be "healthy."

The government's list of "unhealthy" products has expanded from traditional targets like tobacco companies, to sugar-sweetened beverages, salt, whole milk, candy, snack food, trans-fats, and fast food restaurants. The end result of the government's campaign against these industries will be the loss of jobs, increased prices, and diminished choices for consumers. The irony is of course that in one of the steepest recessions ever experienced in this nation's history, certain companies are finding their industry under attack by the government under the auspices of legislation which was supposed to create 3.5 million new jobs.

Buried in the stimulus on pages 66 and 67, is a $1 billion grant for a "Prevention and Wellness Fund." Kathleen Sibelius's Department of Health and Human Services has used the Center for Disease Control (CDC) to administer $650 million for a program called "Communities Putting Prevention to Work" (CPPW). The program's goal is to give states and local governments $493 million in grants for the purpose of "Statewide Policy and Environmental Change: to support and institutionalize healthy behaviors related to obesity control, nutrition, physical activity, and tobacco control."[1]

The CDC outlines grant programs and "intervention" strategies for grant applications under the acronym MAPPS —Media Interventions, Access Interventions, Point of Purchase Information Interventions, Price Interventions, Social Support and Service Interventions. These strategies explain how local and state governments can use federal funds in order to intervene when a consumer wants to make a government-deemed unhealthy purchase. Some specific ways they suggest local governments use stimulus funds to limit access are: reducing the density of fast food restaurants (i.e. passing zoning laws outlawing fast food restaurants), putting a freeze on development of fast food restaurants, limiting how many are allowed in a given density, and controlling their access to space.[2] In addition to zoning regulations they also recommend that local governments implement menu labeling standards and mandate sodium reduction in food.

In addition to zoning and menu labeling, they suggest giving high quality shelf space to healthy items. Two of the top targets of this shelving strategy would be tobacco and soda. Currently, many gas stations and convenience stores stack packs of cigarettes on a wall behind the cash register. These strategies to hide "unhealthy" products in store will have a negative impact on convenience stores.

One of the worst parts of this package of stimulus grants is that the money is going to lobby state legislators to raise taxes on tobacco, snack foods, and sodas. We also know that funds will be used for "community organizing" for the purpose of "changing relative prices of healthy vs. unhealthy items."[3]

At a time when the unemployment rate in this nation is almost 10 percent and millions of people are unemployed it is startling to see that stimulus funds are being used to attack private-sector companies that the government deems to produce "unhealthy" products. At best this spending can be described as wasteful; at worst it can be described as destroying jobs for the benefit of left-wing special interest groups. ■

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Courtney O'Brien is the legislative assistant for ALEC's Commerce, Insurance, and Economic Development Task Force and ALEC's Public Safety and Elections Task Force.

1 www.astho.org/advocacy/stimulus-funding/.

2 MAPPS Intervention for Communities Putting Prevention to Work.

3 *ibid.*

The Worst Tax of All

An Attack on American Consumers

BY ELI LEHRER

An obscure tax proposal with a long name buried on page 161 of President Barack Obama's 2011 budget could cost Americans billions of dollars over the next several decades. The proposal's name—"deduction disallowance for excess non-taxed reinsurance premiums paid to affiliates"—may induce yawns, but could very well be the single worst idea in the budget. The proposal won't generate any meaningful amount of federal revenue but will raise prices on insurance of all kinds, encourage the growth of government insurance mechanisms, and risk starting a trade war with the European Union.

Explaining the proposal and how it would work requires a little background in how insurance companies reimburse themselves. To begin with, all sizeable primary insurers—companies like Allstate and Travelers that sell products directly to consumers, as well as companies like CNA and ACE that deal in commercial insurance—buy coverage of their own (reinsurance) to cover expenses after major catastrophes and to diversify the types of risks they face. Reinsurance typically comes into play following expensive contingencies like hurricanes and billion-dollar liability payouts. Almost all large primary insurers buy "affiliated" reinsurance from a parent or sister company they can trust with information about their greatest liabilities and that they know won't abandon them after a major loss. The transfer of risk, even within the same company, is more than a parlor game; to stop companies from using a reinsurance purchase as a tax dodge, tax collectors like the IRS and the UK's Inland Revenue carefully monitor the prices and penalize companies that don't charge their own affiliates prices comparable to those on world markets.

Eli Lehrer is the senior fellow and director of the Center on Risk, Regulation, and Markets at The Heartland Institute.

Most reinsurance comes from companies that have "domiciles" (official headquarters locations) outside of the United States. Right now, Germany, Switzerland, Bermuda, the UK, and Japan are the biggest offshore reinsur-

ance markets. International transactions play a major role in making all types of insurance work as advertised; insurance prices fall when insurers manage risks across a broader pool of similar risks where claims are unlikely to happen at the same time, from the same cause, or in the same location. For example, international markets do this when they let insurers pool the risk of a cyclone hitting Australia with the risk of a hurricane in Florida, the risk of a flood in the UK, and the risk of an industrial accident in Japan. Because it's exceedingly unlikely that all of these things would happen at the same time, reinsurers can profit off sales of one type of coverage even as they pay large claims on another.

Currently, U.S. and offshore companies get taxed in different ways but end up paying roughly the same amount of tax to do the same things. U.S.-based companies pay a corporate income tax while non-U.S. companies pay both the U.S. tax on purely U.S. operations and a Federal Excise Tax on U.S. revenues that go elsewhere. This system, while overly cumbersome in some respects, results in effective U.S. business tax rates that are about the same for both U.S.-based and non-U.S. companies.

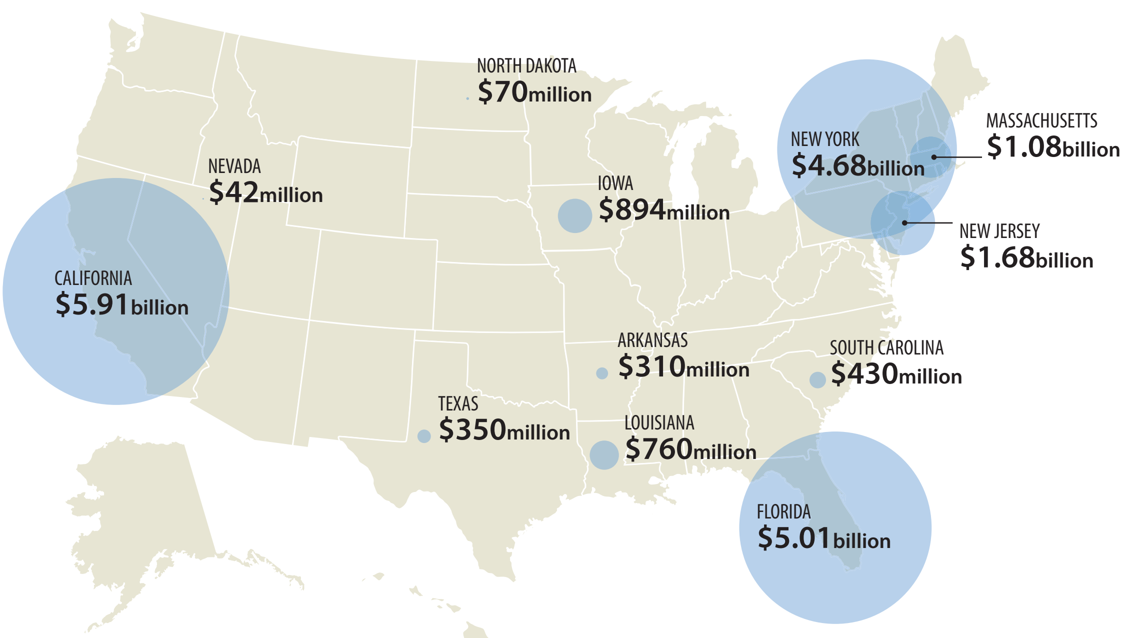
Obama's proposal, and a similar more sweeping version of the same tax from Rep. Richard Neal (D-MA), would impose a protectionist tariff on many types of offshore reinsurance transactions. Rep. Neal's proposal would essentially end the use of affiliated reinsurance by many non-U.S. companies while Obama's would put a serious crimp in it. Either way, the overall supply of reinsurance would plummet and the cost of reinsurance would rise for everyone. This, in turn, would lead to a rise in primary insurance prices because all states have laws requiring that insurers charge "adequate" rates and a direct increase in the cost of an input like reinsurance would make it almost inevitable that consumers would see rate hikes in most places.

The Brattle Group, a Cambridge, Massachusetts-based economics consulting firm, estimated that the overall supply of reinsurance would contract by 20 percent if Neal's version of the tariff became law. Specific numbers aren't available for Obama's but its consequences would be similar. Over a decade, Brattle estimates, the prices that consumers pay for insurance would rise by a total of $100 to $120 billion.

The pain of these increases, furthermore, wouldn't be spread equally across all industries or states. In fact, Brattle estimates that certain states and certain industries would bear the brunt of the burden (see map below for more information about states that would see the biggest increases in insurance prices). Likewise, while costs would rise for almost every type of insurance that uses reinsurance, costs would rise far more steeply in some industries and others (see chart on page 14).

While some people, like homeowners in coastal areas, could see their own insurance premiums surge, most Americans will see the higher insurance costs embedded in the costs of nearly everything they buy. More expensive aircraft insurance will raise the price of travel, for example. Higher liability costs in industrial plants could raise the cost of everything from food to automobiles. Some of the costs will end up being paid by stockholders or (*Tax*, *continued on p. 14*)

INSURANCE TARIFF PRICE INCREASES by state, selected insurance lines, 10-year period



Source: The Brattle Group, authors calculations.

Freedom to Give Under Attack

BY MATTHEW VADUM

If it's your money, you should be able to dispose of it as you see fit, right? Most Americans would agree you should have the freedom to spend your assets as you please. That's the very essence of America.

If you're feeling charitable and want to donate to the local opera house, that's your business. If you want to devote your money to a particular charity or if you want your money to be spent on specific causes after you die, that's also your prerogative.

But activist groups beg to differ as they challenge your freedom to choose how to spend your money. If they prevail, they will undercut the idea of voluntary philanthropy and compromise the property rights of donors.

"These groups, representing political activists and special interests, have developed a social theory to justify the claims they make on philanthropists' money," explains Capital Research Center President Terrence Scanlon. "According to them, philanthropy betrays its highest ideals unless it gives them grants."

The approach Scanlon criticizes was laid out in *Criteria for Philanthropy at Its Best*, a report issued in 2009 by the National Committee for Responsive Philanthropy. The report argues the best philanthropy underwrites "advocacy" and "community organizing" groups that know how to "contextualize" issues of race, gender, and class while working for social and policy changes to overcome "structural barriers" to equality. This paper examines some of the issues raised by this assault on the principles undergirding philanthropy.

Matthew Vadum is senior editor at the Capital Research Center, a Washington, D.C. think tank that studies the politics of philanthropy. Vadum is also adjunct scholar at the Tallahassee, Florida-based James Madison Institute. This article is based on Vadum's "The Future of Philanthropy in Florida," published by the James Madison Institute in December 2009.

The Roots of the Challenge

The politically correct perspective is old news. Former U.S. Labor Secretary Robert Reich has complained too much philanthropy is devoted to "culture palaces," including "operas, art museums, symphonies and theaters."

Donations to such institutions "aren't really charitable contributions," and because tax agencies are failing to receive taxes on the donations, "this gap has to be filled by other tax revenues or by spending cuts, or else it just adds to the deficit," Reich writes.

The report from the NCRP—which counts the Tides Foundation, Woods Fund of Chicago, Catholic Campaign for Human Development, and ACORN affiliate Project Vote among its members—is no mere pie-in-the-sky proposal. Already, there are groups that not only

want to put its ideas into effect but want the government to enforce them.

For instance, Berkeley, California-based Greenlining Institute argues any grants made by a philanthropic foundation should be subject to government oversight because foundation assets are tax-exempt and, therefore, "public." The public is "subsidizing" the foundation by not taxing its endowment, so the government should have the right to decide whether the foundation is making the right kind of charitable contributions.

In 2008, Greenlining persuaded California Assemblyman Joe Coto, a Democrat, to introduce AB 624, which would have forced large foundations to collect and publicly disclose the extent to which their grant-making served minority-led and community-based groups. Some California-based foundations protested it was sufficient that current law already required private grantmakers to give a specific percentage of their endowment to registered charities.

On Jan. 29, 2008, the California Assembly passed AB 624 on a 45-to-29 vote. The legislation would have compelled "every private, corporate, and public operating foundation [with] assets over $250 million" to make unprecedented public disclosures. It would have required public disclosure of the "race, gender, and sexual orientation" of each foundation's board of directors.

The legislation also would have required public disclosure of "the number of grants and percentage of grant dollars" awarded to groups "serving specified communities," and of "the number of grants and percentage of grant dollars" awarded to groups "where the grantee's board of directors and/or staff" belong to "specified groups."

In addition, the legislative language would have compelled foundations to disclose the quantity of "business contracts" and "grants and grant dollars" given to groups "specifically serving African-American, Asian-American, Pacific Islander, Caucasian, Latino, Native American, and Alaskan Native communities, lesbian, gay, bisexual, and transgender communities, and other underrepresented communities."

Another provision added to AB 624 would have required that foundations include the number of grants and percentage of grant dollars "awarded to predominantly low-income communities" in their public disclosures.

As Heather R. Higgins, president of the Randolph Foundation, wrote in a *Wall Street Journal* opinion article, under the legislation a foundation that makes a grant to a group dedicated to protecting sea otters could find itself second-guessing whether it is serving the right constituency.

Or the Latina director of a community organization might wonder whether she can better her chances of getting a foundation grant if she puts a person of a particular race, gender, or ethnicity on her board.

"The bill," Higgins noted, "has been rightly criticized for its potentially crippling costs: fewer funds and greater bureaucratic burdens for the thousands of charities served by charitable foundations." Policymakers "should understand what a disincentive—and an injustice—it would be for the government to micromanage private charity to favor a preferred political agenda, thereby turning private funds into public funds by diktat."

The legislative staffer in California echoed the observations of Higgins: "This is a shakedown by the left of foundations and the charitable community. When you start with groups that have 'assets over $250 million,' there is only one way to ratchet it, and it is downward. [The bill] will be expanded to reach most foundations. And then it can go nationwide."

On June 23, the day a California State Senate committee was supposed to consider the legislation, Assemblyman Coto pulled the bill because close to a dozen of California's largest foundations suddenly came up with $30 million in additional grants to minority-led and community-based groups.

Coto acknowledged that shaking down those wealthy charities had been the goal all along. There was "evidence that the level of investment by these foundations in minority communities was inadequate compared to the level of investment they are making elsewhere," he said. By prevailing on foundations "to shed some light on their investments," Coto said it was his hope that "they would then be in a position to make greater investments."

Greenlining accomplished this feat by threatening to ram Coto's measure through the California Legislature, forcing charitable foundations to publicly disclose the race, gender, and ethnicity of their board trustees and the boards and staff of their nonprofit grant recipients. Charities realized it's a stone's throw from mandatory race, gender, and ethnicity reporting to government directives on how charities should distribute their funds.

California-based foundations didn't want to risk having the ability to make their own decisions could be taken away from them. Rather than have to comply with an arbitrary law that could open the door to more government interference in their affairs, the affected California foundations promised to do better and gave Greenlining money to go away. *The Wall Street Journal*'s editorial board described the Greenlining approach as "racial extortion" and a "race-baiting money grab."

Origins of the Greenlining Institute

The Greenlining Institute is not well known in philanthropic circles. It had a 2008 budget of $4,288,891 and had a hefty endowment of almost $18 million at the end of 2008.

The objective of the shakedown art-

ists at Greenlining is to pressure politicians and the California business community to back "community reinvestment" in low-income and minority neighborhoods.

The Greenlining Institute is the offshoot of the Greenlining Coalition, a statewide umbrella group of leaders of the African-American, Asian-American/Pacific Islander, and Latino communities founded in California in 1971. Greenlining is a political first cousin to adherents of radical community organizer Saul Alinsky and to the embattled nationwide activist group ACORN, which claims to represent low-income families.

The Greenlining Institute has enjoyed tremendous success in convincing the business community to do what it wants. Just like ACORN, it uses the *Community Reinvestment Act* (CRA), which amounts to a financial affirmative action program, as a political and financial cudgel. In order to ensure that banks extend credit to low-income communities, the CRA forces banks to lend money in the same communities from which they receive deposits.

According to *American Banker* newspaper, "Greenlining uses the potential profitability of investing in lower income communities as an argument for banks to sign community reinvestment deals. To date [i.e. 2005], the group has negotiated commitments of more than $2.4 trillion under the Community Reinvestment Act of 1977."

The CRA changed the way U.S. financial institutions operate. Although it didn't cover all mortgages, CRA opened the door for community organizers to weaken lending standards by inviting them to blackmail banks at report card time. To seek a race-based kind of social justice, CRA prohibited banks from concentrating on loans to more affluent, creditworthy markets, a business practice now known by the pejorative term "redlining." CRA gave federal bureaucrats, egged on by left-wing activists, discretionary authority to make trouble for banks that failed to lend enough money to "underserved" minority communities.

The Greenlining name is a play on the unlawful practice of "redlining." Green means "go." The Institute wants banks to give a green light to loans in these areas instead.

Conclusion

But there is some reason for optimism: Not all large foundations targeted by the Greenlining Institute have given in to the pressure.

Richard Atkinson, a member of the Koret Foundation's board and president emeritus of the University of California, strongly criticized the California legislation.

Atkinson said that the measure was an "intrusive attempt to redirect the distribution of charitable dollars away from legitimate nonprofits" to others "anointed as more 'worthy' by the state."

The Greenlining Institute is pushing for so-called economic democracy. Greenlining uses redistributionist shorthand, claiming it stands for "democratizing philanthropy."

Although the idea that donors should control their own funds is well established in American law, some groups want to undermine the legitimate property rights of donors in order to promote their vision of "social justice."

However, it's not their money, after all. Going back centuries, it has been the view that government should intervene only when a bequest is immoral, unlawful, or is rendered obsolete or impossible to attain, and then a probate court should reach a decision that comes closest to the donor's intent.

American philanthropy doesn't need to be "democratized." Fortunately, ALEC is aware that the Greenlining movement's attack on philanthropic freedom could spread from California to other states. Indeed, Greenlining-like groups are already seeking to replicate their California successes in Florida and New York state. In response, ALEC is circulating the draft version of a document titled "Principles for Model State Laws to Encourage Philanthropic Creation and Operation," which ALEC members may access through the organization's website. ■

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1 Statement of Terrence Scanlon available at http://www.capitalresearch.org/news/news.html?id=697.

2 NCRP report available at http://www.ncrp.org/paib.

3 "Is Harvard a Charity?" by Robert Reich, *Los Angeles Times*, Oct. 1, 2007, available at http://www.robertreich.org/reich/20071001.asp.

4 NCRP member list available at http://www.ncrp.org/partners-members.

5 "Race and Gender Quotas for Nonprofits: How California Bill AB 624 Threatens Foundation Philanthropy," by John Gizzi, Foundation Watch, July 2008, available at http://www.capitalresearch.org/pubs/pubs.html?id=645.

6 "The 'Diversity' Threat to California Charity," Heather R. Higgins, *The Wall Street Journal*, May 30, 2008, available at http://online.wsj.com/article/SB121210971023331419.html.

7 Gizzi.

8 *Ibid.*

9 "The Philanthropy Shakedown: Give to 'minority led' charities, or else," *The Wall Street Journal*, Dec. 30, 2008, available at http://sec.online.wsj.com/article/SB123060161738741415.html?mod=todays_europe_opinion.

10 The dollar figures appear in Greenlining's IRS Form 990 for tax year 2008 available at http://www.guidestar.org.

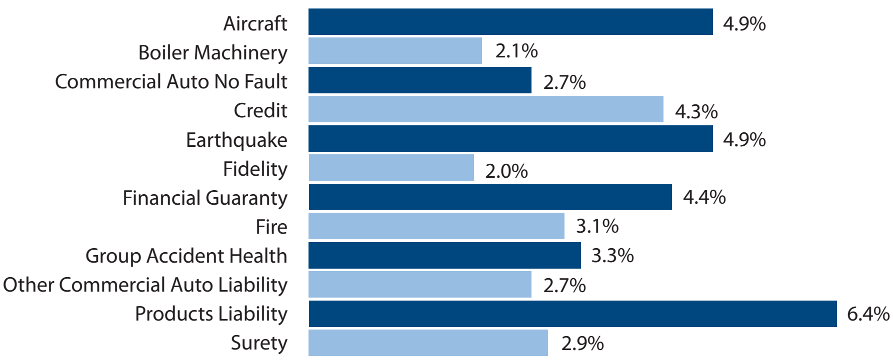
11 "Greenlining's Secret Ingredient: Cooperation," by Kathleen Schmermund, *American Banker*, Aug. 16, 2005.

12 Gizzi.

13 See http://www.greenlining.org/initiatives/democratizing-philanthropy.

14 Martin Morse Wooster, The Great Philanthropists and the Problem of 'Donor Intent' (3d ed.) 2007, Capital Research Center, p. 225.

PRICE INCREASE BY TYPE OF INSURANCE RESULTING FROM INSURANCE TARIFF



(***Tax***, *continued from p. 10)* employees of corporations hit by higher insurance premiums, but since these higher costs will hit all non-insurance industries equally, it's overwhelmingly likely that consumers of almost everything will end up paying the brunt of the burden.

There is also strong reason to think that Brattle's estimates are conservative. To begin with, the researchers at Brattle essentially assumed that the total amount of money available would remain the same as during the period in this decade when it collected data. But since then, the global financial crisis has choked off much of the capital. However, it's certainly possible that the impact might even be broad by encouraging market participants to withdraw from the United States, or by triggering retaliatory trade sanctions. This in turn would lead to even higher prices. Likewise, most states would probably simply authorize insurance rate hikes, but disaster-prone states like Texas and Florida have already implemented price-control regimes that make it very difficult for insurers to pass along increase costs.

In those two states and some others, this could serve to expand the role of government a great deal. Nearly all disaster-prone states maintain a government-run or government-mandated "residual" insurance mechanism that sells coverage to those unable to get it at a "reasonable" price in the private market. These range in size from the Florida Citizens' Property Insurance Corporation which writes homeowners' insurance for one Floridian in five, to the Washington State FAIR Plan that writes fewer than 100 policies to less than one-tenth of one percent of the state's residents. Although they have a variety of legal structures and typically have some sort of firewall separating them from state general revenues, taxpayers have always ended up on the hook when these markets have grown. The tax would expand their size and thus make taxpayers liable for even more.

A trade war could also result, when the tax solicited comments on Neal's proposal last year, the Senate Finance Committee received letters from the European Commission strongly hinting that it would impose trade sanctions if the United States imposed the tax. Bermudian, Swiss, German, and United Kingdom governments, among others, have also expressed concern over the taxes.

For all this, it's not clear if the tax would make any significant contribution to federal revenue. The Joint Committee on Taxation estimates that the tax would bring in $2.3 billion over a 10-year period. This estimate, however, appears greatly over-optimistic; many major international reinsurers would likely cut back on business in the United States that the tax would make uneconomical rather than pay the tax. A few U.S-based reinsurers might gain but, on balance, U.S. consumers would lose.

For all of the tax's negative consequences, it still has some chance of becoming law. Like many bad public policies, it offers concentrated benefits but diffuse costs: the owners of U.S.-based insurance companies—which employ thousands in the United States—would benefit greatly from the new tax. In fact, Connecticut-based W.R. Berkley, a highly specialized reinsurer that underwrites exotic assets like sports teams and art collections, has led the effort to impose it. Furthermore, the U.S. companies that would receive the greatest direct benefits of the tax employ far more workers here than the offshore companies that would be hurt by it.

Hardly anybody in the reinsurance business—even the offshore companies opposed to it—will end up in the poorhouse if the proposal becomes law. Reinsurance can be a lucrative business—it's the chief source of Warren Buffett's wealth—and major international reinsurers will figure out how to manage the tax in ways that limits impacts on their bottom lines. American consumers, however, will end up as the big losers; prices will rise sharply for many types of insurance and coverage may become unavailable in places.

In short, an apparently obscure tax with a weird name could spell big trouble for people all over the country. It would cause significant pain for American consumers and produce little revenue for the government. It needs to die. ■

FCC National Broadband Plan

Blueprint or Boondoggle?

BY STEVEN TITCH

The Federal Communications Commission released its National Broadband Plan on March 16, setting a broad, sweeping, and ambitious agenda for the U.S. telecommunications and information technology industry.

The 360-page document, reportedly reflecting the vision and ideas of FCC Chairman Julius Genachowski, imagines a major expansion of government into the business of broadband technology, services and content, and sees the FCC expanding into areas previously outside its policy jurisdiction, including the regulation of broadband business models, website information-gathering, Internet content, and the funding of digital media companies.

Very much a blueprint, the plan puts forth some 200 recommendations. The agency is planning some 40 Notice of Proposed Rulemakings (NPRMs) related to the plan. Several proceedings, including inquiries into universal service reform, nationwide mobile connectivity and data roaming, and video set-top box technology already are underway.

The National Broadband Plan, available for download at www.fcc.gov, lists six overarching, long-term goals to be reached by 2020:

- It aims for 100 megabit-per-second (Mb/s) service, currently achievable with fiber-to-the-home platforms such as Verizon's FiOS, to 100 million homes.
- It calls for U.S. leadership in mobile innovation, with the fastest and most extensive wireless networks of any nation.
- It calls for affordable, robust broadband access to every American.
- It calls for a nationwide, wireless, interoperable broadband network for public safety and emergency response.
- It seeks a minimum of 1 gigabit-per-second (Gb/s) aggregate bandwidth to every American community by 2020. While most cities and towns have far more than this today, this goal is primarily aimed at rural communities in order to deliver quality broadband to larger institutions—hospital, schools and factories—that can anchor local consumer broadband growth.
- It states that every American should be able to use broadband to track and manage their real-time energy consumption.

To achieve the goals, the plan suggests numerous policy initiatives for the FCC, Congress and state and local governments. Many of the proposed policies, especially those pertaining to Internet service providers (ISPs), wireless service providers, web content providers, and media companies have historically been outside the FCC's mandate. In light of the U.S. Circuit Court of Appeals for the District of Columbia Circuit 3-0 decision in *Comcast v. FCC*, which ruled the FCC does not have the authority to regulate ISPs, the FCC ultimately may need Congressional authorization to enact some of these initiatives.

The recommendations made within the plan range from general to specific. Many, at heart, are aimed at closing the broadband service gap that exists between urban and rural areas, and the gap in broadband adoption between low-income households and middle- and higher-income consumers.

Broadly, the FCC calls for policies to ensure robust competition. It also wants to ensure efficient allocation and management of assets the government controls in a way that encourages upgrades and competitive entry. These assets include spectrum, public rights-of-way, and utility poles.

More specifically, the plan sets out to reform universal service mechanisms by creating a Connect America Fund (CAF) to subsidize broadband deployment in unserved or underserved areas. Over a 10-year period, CAF would replace the current high-cost and low-income funds that today make up the majority of Federal Universal Service Fund subsidies. These funds tend to support narrowband dial-tone service, which consumers are abandoning in greater numbers for wireless and broadband alternatives.

Lastly, the plan seeks to update federal and state policies to incentivize these goals and increase the attractiveness, value and benefits of broadband for the government, education, health care, energy and public safety sectors.

Steven Titch is a telecom policy analyst for the Reason Foundation.

Some Good Points

As a document, the national broadband plan reveals solid understanding on the FCC's part of the impact broadband has on the U.S. economy and the impact it has had in American life. This is a welcome change from the regime of the previous chairman, Kevin Martin, who seemed preoccupied with regulating broadcast and Internet content for indecency, and expanding regulation over cable companies. Overall, however, after years of the FCC's attempts to regulate the business as if it still existed in the legacy silos of yesteryear—local vs. long distance; wireline vs. wireless, dial-up vs. broadband—its broadband plan seems to grasp how the new ecosystem of Internet companies, service providers, content providers, software developers and device makers, form a diverse yet functionally interdependent group.

There also is a strong understanding, even endorsement, of the role of wireless in broadband development. In the past, wireless has been approached by policymakers as a second-rate service, hence the reluctance to extend Carrier of Last Resort requirements to wireless service providers. WiFi and 3G wireless were seen as "poor man's" alternatives to DSL and cable modems. With the introduction of platforms such as the iPhone and WiMax, as well as the advent of Web 2.0, which builds on the way the Web can interact with mobile devices, the FCC has at last seen inherent value in mobile and wireless broadband.

Finally, there are solid recommendations about how government agencies at all levels can benefit from greater use of broadband—and how they translate to citizen benefits. While the plan leaves plenty of room for debate as to how to set policy to achieve the objectives it sets forth, it provides a 21st century foundation for this debate.

Problems with the Plan

From a Jeffersonian perspective, the plan aims to close the broadband gap with a centrally-planned industrial policy that touches all points of the commercial Internet ecosystem. Trouble is, it's difficult to argue that the entire Internet industry, which has remained strong despite the recession, is dysfunctional. So, to justify its proposals, the plan severely downplays the role the private sector has had in broadband expansion to date. While it acknowledges that 95 percent of U.S. households have access to broadband, it assumes that the private sector investment has reached its limit and that government support is needed in order to reach that last five percent.

In addition, the cost of implementing all these recommendations is unknown. The plan revisits regulations that have not worked in the past. Finally, it expands FCC regulatory jurisdiction into new areas. In essence, the plan reverses years of successful policy that has allowed the unregulated IT industry to gradually subsume one-time regulated sectors into a new and much larger competitive broadband industry. Instead, the FCC here seeks to apply the

regulatory regime that today governs a shrinking segment of this industry on the much greater whole.

Cost

The FCC assumes the broadband plan will be revenue-neutral or revenue-positive, although it provides no cost estimate. However, it proposes to fund the national broadband plan through auction of 500 MHz of spectrum owned by broadcasters. The first step in this process would be to persuade the broadcasters to vacate this valuable spectrum. The FCC proposes a number of ideas, including offering broadcasters a share of the revenues from the auction. But the proposal itself raises numerous policy questions. Does the FCC even have the legal authority to ask for the spectrum back? What happens if the FCC and broadcasters can't reach an agreement? Why can't the broadcasters reach their own spectrum deal with the wireless providers, wherein they'd keep all the revenues from the sale, not just a portion? At a certain point, will the FCC turn to coercion to get the spectrum back? Bottom line, the funding of the entire National Broadband Plan hinges on a sale of assets the government does not own.

Revisiting Failed Policy

Among the plan's many recommendations are policies that have been tried in the past and failed. These include wholesale line-sharing rules that would require phone, cable, and wireless companies to make their facilities available to competitors at rates below cost. These rules would revive the attempts at Unbundled Network Elements-Platform (UNE-P) regulations that have been struck down in court multiple times.

The plan calls for more public broadband, that is, government-funded broadband networks that would compete with commercial services. These projects have been attempted by municipalities over the past eight years, with the overwhelming majority failing to deliver ubiquitous broadband service and lower rates for local consumers, even when subsidized through taxes or government bonds. Today, most municipal broadband systems that have not folded have either been sold to private sector companies or are being used to support internal government IT operations, such as worker mobility, traffic control, and video surveillance.

Even as the plan touts spectrum auction as revenue source, it seeks to offer discounts and set-asides for businesses that promise to adopt unique business models. This recalls the previous administration's decision to set aside a portion of wireless broadband spectrum for bidders who agreed to provide a tier of free wireless services, offer "family-friendly" Web access, or sell open platform handsets that could work on any service provider system. Because these business models didn't attract the major carriers, the FCC was forced to postpone the auction repeatedly for fear that the winning bid would be far less than the spectrum was worth.

Expansion of Power

To date, FCC's regulatory scope primarily is focused on telecommunications services—that is, services defined as point-to-point voice telephony. The Communications Act sets specific limits on FCC regulation of the Internet, broadband, cable TV, and wireless data. These limits were upheld in the recent D.C. Court of Appeals decision.

Among the most troubling parts of the FCC's broadband plan are the recommendations it makes for segments outside its regulatory purview. These recommendations are still subject for debate, but those who believe that consumers have been served best by an unregulated U.S. Internet industry, arguably the fastest moving and most innovative worldwide, are likely to find the FCC's recommendations in the regard as an unnecessary overreach.

Some recommendations include:

- FCC regulation of the way websites such as Facebook, LinkedIn, and MySpace collect and use personal information, regulations that can easily extend to any website that uses advertising as a revenue model.
- An FCC role in setting Internet media and content policies.
- FCC funding of the expansion of PBS media and content on the Web.
- Greater FCC regulation of set-top cable boxes, especially in the way consumers are able to use them to access programming via cable TV, video-on-demand, Web-based platforms, and even DVDs.

The FCC even expresses concern for the current financial problems of print media and, while stopping short of recommending specific solutions, suggests there is a potential government role in funding, preserving and/or transitioning print media to the Web.

Summary

The National Broadband Plan raises important issues and sets a good framework for debate.

Some goals are worthy, especially when it comes to creating the proper regulatory climate for greater competition and investment in areas unserved or underserved by broadband.

Yet it attempts to use sweeping government intervention to address a problem that can be attacked and solved with more targeted policies that are market-friendly and far less intrusive. Its cost is uncertain and we have yet to see a clear path toward its funding. In the end, its huge scope may make it unworkable. ■

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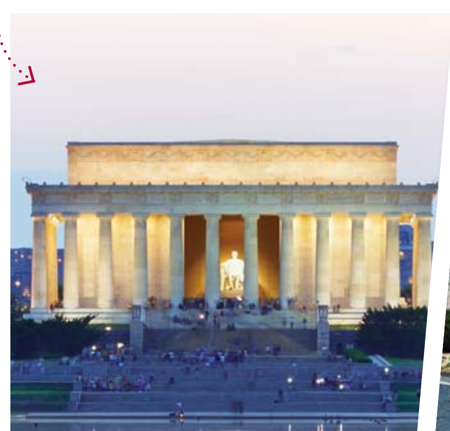

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